

FCC MAIL SECTION
Federal Communications Commission
Washington, D.C. 20554

DEC 28 2 20 PM '93

MM Docket No. 93-311

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
 Table of Allotments,
 FM Broadcast Stations.
 (Bagdad, Arizona)

RM-8382

NOTICE OF PROPOSED RULE MAKING

Adopted: December 7, 1993; Released: December 28, 1993

Comment Date: February 18, 1994
Reply Comment Date: March 4, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed by Chris Sarros ("petitioner") requesting the allotment of Channel 276C3 to Bagdad, Arizona, as that community's second local FM service. Petitioner stated his intention to apply for Channel 276C3 if it is allotted to Bagdad.^{1,2}

2. We believe the public interest would be served by proposing the allotment of Channel 276C3 to Bagdad since it could provide an additional local aural transmission service to the community.

¹ Although petitioner's request was signed, an affidavit was not included verifying that the statements contained in the petition are accurate to the best of petitioner's knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in initial comments in response to the Notice.

² We note that petitioner herein was also the proponent of a rule making proceeding which allotted Channel 280A to Bagdad, Arizona, in MM Docket No. 92-48. See 8 FCC Rcd 2168 (1993). Although petitioner stated an intention to apply for a station on Channel 280A in the context of the referenced proceeding, Commission records do not reflect that he filed an application, as previously represented. While we have no reason to doubt that petitioner's statement of intent to apply for Channel 280A at Bagdad was premised on a valid intention to do so, we caution prospective petitioners against filing petitions for rule making in the absence of a genuine interest in pursuing

Technical Statement

3. Channel 276C3 can be allotted to Bagdad consistent with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules, provided the transmitter is located at least 16.4 kilometers (10.2 miles) southwest of the community at coordinates 34-28-50 and 113-20-08.³ Additionally, as Bagdad is located within 320 kilometers (199 miles) of the United States-Mexican border, the Commission must obtain the concurrence of the Mexican government in the proposal.

4. Accordingly, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Bagdad, Arizona, as follows:

	Channel No.	
City	Present	Proposed
Bagdad, Arizona	280A	276C3, 280A

5. IT IS ORDERED, That the Secretary of the Commission shall send a copy of this Order by Certified Mail, Return Receipt Requested, to the licensee of Station KQST(FM), Sedona, Arizona, as follows: American Aircasting Corporation, P.O. Box 1966, Sedona, Arizona 86336.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **February 18, 1994**, and reply comments on or before **March 4, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

the allotment request. In the event a pattern of such activity is found, the Commission could initiate an inquiry to determine whether an abuse of our processes has occurred, or disregard the petitioner's expression of interest. See *Morristown, New York*, 5 FCC Rcd 6976 (1990). See also, *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3915 (1990).

³ Although the reference coordinates proposed herein are short spaced to the allotment coordinates for Channel 275C at Sedona, Arizona, at coordinates 34-52-11 and 111-45-37, and no theoretical site appears to be available to negate the short spacing, we believe the noted deficiency should not preclude the issuance of a Notice of Proposed Rule Making seeking comments on the requested allotment of Channel 276C3 at Bagdad. The site specified in the instant request meets the minimum distance separation requirements to the site specified in the construction permit issued for Station KQST(FM), Channel 275C at Sedona (File No. BPH-880419IC) at coordinates 34-58-07 and 111-30-28. Therefore, since the Bagdad allotment proposal is dependent upon the grant of a license on Channel 275C at the site specified in the construction permit for Station KQST(FM) as noted above, the issuance of a license for Channel 276C3 at Bagdad may be withheld until the license grant occurs at Sedona. The licensee of Station KQST(FM) will be served with a copy of this Order.

Chris Sarros
3815 Northfield Avenue
Kingman, Arizona 86401

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should

also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.